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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,916	10/10/2003	Geoffrey Maseruka	090426-00002	7684
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WARD AND SMITH, P.A. 1001 COLLEGE COURT P.O. BOX 867 NEW BERN, NC 28563-0867			EXAMINER LEVINE, ADAM L	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 11/05/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/681,916

Applicant(s)

MASERUKA, GEOFFREY

Examiner

ADAM LEVINE

Art Unit

3625

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16, 18,20 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-16, 18,20 and 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notes of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's amendments and remarks filed September 2, 2010, are responsive to the office action mailed June 10, 2010. Claims 1, 3-16, 18, 20, and 22-24 were previously pending and claims 1, 3, 5, and 10-15 are amended. Claims 1, 3-16, 18, 20, and 22-24 are therefore currently pending and examined in this office action.

Response to Amendment

Pertaining to objection to the specification

The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter because "Found shelf space," and "computer readable storage medium" are not introduced or described in the specification. "Found shelf space" has been removed from the claims, overcoming the rejection with regard to that subject matter.

Pertaining to rejection under 35 USC 101 in the previous office action

Claims 10-12 were rejected under 35 U.S.C. 101 because the claimed invention was directed to non-statutory subject matter. This rejection has been overcome by amendment.

Pertaining to rejection under 35 USC 112 first paragraph in the previous office action

Claims 1, 3-16, 18, 20, and 22-24 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This rejection has been overcome by amendment.

Response to Arguments

Pertaining to objection to the specification

Applicant's arguments filed September 2, 2010, have been fully considered but they are not persuasive. "Computer readable storage medium" is not introduced or described in the specification and did not appear in the original claims. Applicant argues that support can be found in specification paragraphs [0016] and [0039], however these paragraphs do not introduce computer readable storage medium in connection with the method steps. Storage, programming, and software are described but only tangentially and in specific relationship to subject matter not connected with program instructions comprising a method on a medium.

Pertaining to rejection under 35 USC 112 second paragraph in the previous office action

Applicant's arguments filed September 2, 2010, have been fully considered but they are not persuasive. Applicant misstates the ground for the rejection. This is not a 35 USC 112 first paragraph rejection, but a rejection under 35 USC 112 second paragraph. Enablement is not at issue. In response to applicant's representations concerning specification paragraphs 0032-0036, 0044-0048, 0050-0053, 0055-0057, and the figures relevant thereto, these portions of the disclosure are a description of the process, not the means for accomplishing the steps. Applicant may have intended that the means be entirely software but has never clearly stated what comprises the claimed "subsystems" or "sections." The description consists entirely of declarative statements regarding the method that applicant wants to accomplish, but does not clearly state the means by which this is to be achieved.

Pertaining to rejection under 35 USC 103 in the previous office action

Applicant's arguments filed September 2, 2010, have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "need to search for available storage space") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues that in the prior art "there is no need to search for available storage space...." Remarks page 9. As has been previously discussed at length, searching for available storage space is not disclosed or enabled in the present application. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant's arguments concerning "supplier" and "negotiation" are irrelevant because as clearly explained in the rejection those features are present in Walker and are not an aspect of the element that Levasseur is cited to disclose. Levasseur is only cited as disclosing "ensuring that there is available shelf space."

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "Computer readable storage medium" is not introduced or described in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. **Claims 1, 3-9, 13-16, 18, 20, and 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

It is unclear whether the claim elements indicated by "subsystem comprising a section for..." are means (or step) plus function limitations that invoke 35 U.S.C. 112, sixth paragraph, because it is unclear whether "a section" is intended to represent sufficient structure, material or acts for performing the claimed functions. If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to:

(a) Amend the claim to include the phrase "means for" or "step for" in accordance with these guidelines: the phrase "means for" or "step for" must be modified by functional language and the phrase must **not** be modified by sufficient structure, material, or acts for performing the claimed function; or

(b) Show that the claim limitation is written as a function to be performed and the claim does **not** recite sufficient structure, material, or acts for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph. For more information, see MPEP § 2181.

If the various numbered "subsystem comprising a section for..." claim elements are intended as means plus function limitations that invoke 35 U.S.C. 112, sixth paragraph, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed functions such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed functions.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1, 3-16, 18, 20, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (Paper No. 20080506; US Patent No. 7,340,419 B2; prior publication 2002/0133407 A1) in view of Levasseur (US Patent No. 5,029,098), and further in view of "FIELDS AND FULMER" (Paper No. 20090123; Non Patent Literature cited in form PTO-892 item U).**

Walker discloses web based (see at least column 4 lines 45-55) systems and methods for marketing products comprising registration of suppliers and information regarding products, registering of vendors and their information, requesting display of products by vendors, and the transacting of sales of products with compensation to vendor and supplier. Please note: the information describing suppliers, vendors, products, etc., is descriptive material and is not functionally involved in the recited steps of the method. Because it has no functional role in the method it is non-functional descriptive material. This descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). MPEP 2106). Walker further discloses:

- a main computer device: (see at least column 4 lines 60-65, column 7 lines 25-65, column 12 lines 14-35);

- providing information on a product and a supplier of said product: registration of suppliers of products and information with respect to said products, cataloguing specifications of products and identification with respect to product contact persons (see at least figs.1-2, 4-7; column 3 lines 38-46, column 5 lines 29-47, column 6 lines 1-7, column 7 lines 4-10); a first subsystem comprising a section for registration of suppliers of products and registration of information with respect to said products (see at least figs.1-2, 4-7; column 3 lines 38-46, column 5 lines 29-47, column 6 lines 1-7, column 7 lines 4-10); supplier registration includes a first section for supplier registration information (see above), a second section for rules of use, a third section which generates username and password information for said supplier (see at least column 3 lines 3-11, column 8 lines 35-44);
- providing information on vendors: with available shelf space to display said product, said information including information on available shelf space and cost of said shelf space, registration of vendors with shelf space available to display said products and registration of information with respect to finding available shelf space and associated fees, registration of vendors and vendor contact information, section for rules of use and a section that generates username and password information for said vendor (see at least fig.6, column 2 lines 14-22, column 3 lines 3-11, column 8 lines 35-44, 50-61. Please note: providing and registering vendors and information concerning the vendors is being given functional weight by the examiner, however, the descriptive information within

each detail maintained is nonfunctional descriptive matter. For example, the functional aspect of the information is that it has bearing on the ability of the vendor to perform, however, the specific information is nonfunctional because it does not affect the function of the systems and methods. Nonetheless the examiner believes most if not all of the information listed above is in fact disclosed in the reference); a second subsystem comprising a section for registration of vendors with available shelf space to display said products and registration of information with respect to the available shelf space and associated fees (see at least fig.6, column 2 lines 14-22, column 3 lines 3-11, column 8 lines 35-44, 50-61);

- negotiating with said vendors: for selected desired (required) available shelf space in a vendor premise, reserving the selected desired available shelf space for use of the supplier, and the supply and display of said products upon the shelf space and payment for the display and sale of said products, suppliers and vendors negotiate, contact persons negotiate, a third subsystem comprising a section for performing the above (see at least abstract, figs.5,7; column 2 lines 14-22, 48-54; column 3 lines 3-11, column 9 lines 13-26); messaging systems to permit vendors and suppliers to send messages to each other (see at least column 4 lines 45-54, column 5 lines 1-14, column 6 lines 1-21);
- supplying said products to said vendors for display and sale: viewing registered products by location and category, a fifth subsystem comprising a section for

viewing registered products (see at least abstract, figs. 5,7; column 2 lines 14-22, 48-67; column 9 lines 13-28);

- accounting for the sale of said products by said vendors: account section for maintaining account of products shipped, cost of shelf space, sales information, incoming products, inventory and sales, payments, product information, outgoing product section, sales report section, product returns section, direct sales order section and a messaging section, services and fee section, incoming product section, inventory and sales section (see at least fig.2, column 4 lines 45-54, column 5 lines 1-14, column 6 lines 1-21, column 8 lines 20-34, column 9 lines 34-45. Please note: maintaining accounts is being given functional weight by the examiner, however, the descriptive information within each detail maintained is nonfunctional descriptive matter. Nonetheless the examiner believes most if not all of the information listed above is in fact disclosed in the reference);
- providing supplier with a predetermined percentage of said sales: (see at least figs.3,5; column 4 lines 55-67, column 6 line 58- column 7 line 3).
- subsystems are operably interconnected through the internet: computer device is accessible by said suppliers and said vendors through internet connection means via the web, system is web based, maintained by a web provider (see at least column 4 lines 45-60, column 5 lines 29-48, column 7 lines 33-46. Please note: the identity of the entity that maintains the system is not patentable subject matter, nor is it patentably distinguishing. If it were, any entity desiring to use a

previously patented invention could simply draft an application naming themselves as the user);

- direct sales of products: a fourth subsystem comprising a section for direct sales of products (see at least column 2 lines 55-67, column 3 lines 12-19).
- computer readable storage medium: (see at least column 7 lines 32-47, 60-67; column 8 lines 5-19, column 12 claims 11-13).

Walker teaches all of the above as noted and teaches a) accepting products from suppliers for display, b) accepting competing products from other suppliers for display in proximity to similar products, c) negotiations between the vendor and suppliers for display space, d) registration of information from suppliers and vendors regarding products and information regarding relevant display space, and e) the value of limited physical display spaces in stores (see at least column 2 lines 14-22), but Walker does not explicitly disclose ensuring that there is available shelf space in a vendor premise. Levasseur discloses a) accepting products from suppliers for display, b) accepting competing products from other suppliers for display in proximity to similar products, c) negotiations between the vendor and suppliers for display space, and d) the value of limited physical display spaces. Levasseur also teaches ensuring that there is available shelf space in a vendor premise (see at least abstract, figs. 10, 13, 16, 19, 22, 25; column 7 lines 59-69). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the systems and methods of Walker to include ensuring that there is available shelf space in a vendor premise, as taught by

Levasseur, in order to logically broaden the applicability of the systems and methods to a wider range of commercial opportunities and thereby increase its use in commerce.

Walker in view of Levasseur teaches all of the above as noted and teaches a) accepting products from suppliers for display, b) accepting competing products from other suppliers for display in proximity to similar products, c) negotiations between the vendor and suppliers for display space, d) registration of information from suppliers and vendors regarding products and information regarding relevant display space, and e) the value of limited physical display spaces in stores, but Walker in view of Levasseur does not explicitly disclose the application of the systems and method to suppliers and vendors negotiating for the vendors' actual physical shelf space. Fields and Fulmer teaches a) accepting products from suppliers for display, b) accepting competing products from other suppliers for display in proximity to similar products, c) negotiations between the vendor and suppliers for display space, and d) the value of limited physical display spaces in stores and also teaches suppliers and vendors negotiating for the vendors' actual physical shelf space (see at least page 1 abstract, ¶¶2-3; page 2).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the systems and methods of Walker in view of Levasseur to include suppliers and vendors negotiating for the vendors' actual physical shelf space, as taught by Fields and Fulmer, in order to extend the use of the systems and methods to a wider range of commercial opportunities and thereby increase its use in commerce.

Pertaining to system claims 1, 3-9, 13-16, 18, 20, and 22-24

Rejection of claims 1, 3-9, 13-16, 18, 20, and 22-24, is based on the same rationale noted above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM LEVINE whose telephone number is (571)272-8122. The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571.272.6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Levine/
Primary Examiner, Art Unit 3625

Adam Levine
Primary Examiner
November 2, 2010